



# Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108  
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 704

IN THE MATTER  
OF  
DONALD G. McPHERSON

## DISPOSITION AGREEMENT

The State Ethics Commission and Donald McPherson enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 24(j).

On May 21, 2003, the Commission initiated, pursuant to G.L. c. 268B, § 24(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by McPherson. The Commission has concluded its inquiry and, on December 16, 2003, found reasonable cause to believe that McPherson violated G.L. c. 268A, § 19.

The Commission and McPherson now agree to the following findings of fact and conclusions of law:

### **-Findings of Fact-**

McPherson was during the time relevant a Town of Stow Planning Board (Board) member. As such, McPherson was a municipal employee as that term is defined in G.L. c. 268A, § 1.

1. At all relevant times, McPherson was the 95% owner of Minuteman Realty Corp. (MRC). In turn, at all relevant times, MRC owned 125 acres of industrially-zoned land in Stow. McPherson first put this 125-acre parcel up for sale in 1997. At all relevant times McPherson was trying to sell this parcel.

2. Sometime during the early fall 2001 an informal town group know as the Housing Coalition submitted a proposed bylaw (Bylaw) to the Board. The Bylaw would create an overlay district for senior housing. The Bylaw's purpose was to create affordable housing for seniors. (McPherson was not a Housing Coalition member.)

3. The role of the Board was to review the Bylaw draft language, make any changes the Board believed were appropriate, and then decide whether to recommend it to town meeting for approval.

4. On October 30, 2001, McPherson filed a disclosure with the town clerk stating that he owned 125 acres in the proposed age-restricted housing district, and because his involvement in this matter could create the appearance of conflict of interest, he would not participate in the Board's action on the Bylaw.

5. Notwithstanding his disclosure, McPherson involved himself in the Board's consideration of the Bylaw as follows:

On December 6, 2001, the Board met to discuss the Bylaw. McPherson advocated in favor of the Bylaw by (a) noting that developments contemplated under the Bylaw would have no impact on roads and schools; (b) explaining that the Housing Coalition had talked to several developers who had proposed business uses in the industrial zone and found them not to be economically feasible; (c) commenting that senior housing developments were not a good fit in existing residential neighborhoods because access would be difficult; and (d) responding to a question about the compatibility of residential developments in industrial areas by saying that the 25-acre minimum lot size and setback requirements would satisfy any compatibility issues.

On January 15, 2002, the Board met to further consider the Bylaw. McPherson as a Board member again supported the Bylaw. He stated, "This is our industry of the future from a tax perspective;" and "a density bonus makes sense for age restricted housing." McPherson also suggested that a public information meeting be held to discuss the Bylaw.

6. On April 23, 2002, the Board, with McPherson absent, voted to recommend the Bylaw to town meeting.

7. The Bylaw was rejected during the May 13-15, 2002 town meeting.

8. On June 4, 2002, the Board, with McPherson abstaining, again voted to recommend the Bylaw to town meeting.<sup>1</sup>

9. On June 6, 2002, town meeting approved the Bylaw.

10. At all relevant times McPherson knew the Bylaw would make his 125-acre parcel more valuable to potential buyers because they would have more development options.

#### **-Conclusions of Law-**

11. Section 19 of G.L. c. 268A prohibits a municipal employee from participating<sup>2</sup> as such an employee in a particular matter<sup>3</sup> in which, to his knowledge, he or an immediate family member<sup>4</sup> has a financial interest.<sup>5</sup>

12. The decision by the Board to recommend that the Bylaw be adopted was a particular matter.

13. McPherson participated personally and substantially in that matter by significantly involving himself as a Board member in the discussion regarding the Bylaw at the December 6, 2001 and January 15, 2002 meetings.

14. At the time of those meetings, McPherson had a financial interest in the Bylaw decision in that the Bylaw would make the land within the overlay district more valuable because a potential buyer of the land would have more development options. Consequently, McPherson knew he had a financial interest in the Bylaw when he so participated at the December 6, 2001 and January 15, 2002 meetings.

15. Therefore, McPherson violated § 19 by participating in the Board's decision to recommend the adoption of the Bylaw.

### **-Resolution-**

In view of the foregoing violations of G.L. c. 268A by McPherson, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by McPherson:

- (1) that McPherson pay to the Commission the sum of \$2000 as a civil penalty for violating G.L. c. 268A, § 19; and
- (2) that McPherson waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE: May 24, 2004**

---

<sup>1</sup> McPherson also abstained regarding this issue at the February 26, April 9, April 19, May 20, May 31 and June 4, 2002 Planning Board meetings.

<sup>2</sup> "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

<sup>3</sup> "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

---

<sup>4</sup> “Immediate family” means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, §1(e).

<sup>5</sup> “Financial interest” means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.